

# Regular Meeting

<b>Agenda Item #</b>	4
<b>Meeting Date</b>	February 14, 2005
<b>Prepared By</b>	Suzanne Ludlow, Community and Government Liaison
<b>Approved By</b>	Barbara B. Matthews City Manager

<b>Discussion Item</b>	Resolution Authorizing Mayor To Sign Municipal Aggregation Letter of Interest
<b>Background</b>	<p>On January 18, 2005, the Council discussed its support of legislation authorizing the opt-out municipal aggregation of electricity. Since that time, a number of Montgomery and Prince George's County municipalities have expressed their support of the effort and their willingness to sign onto the attached Municipal Electrical Aggregation Letter of Interest.</p> <p>A draft resolution is attached authorizing Mayor Porter to sign the Letter of Interest on behalf of the Takoma Park City Council.</p>
<b>Policy</b>	The City Council sets policy for the City of Takoma Park.
<b>Fiscal Impact</b>	n/a
<b>Attachments</b>	Draft Resolution; Municipal Electrical Aggregation Letter of Interest; Senate Bill 39; MML talking points on the legislation; Flyer from PEPCO expressing concerns about the legislation.
<b>Recommendation</b>	Approve Resolution
<b>Special Consideration</b>	A press event at which a number of municipal representatives will sign the Letter of Interest is scheduled for 10 am, Tuesday, February 15 in the Takoma Park City Council Chambers. Several municipal representatives will then travel to Annapolis to testify on Senate Bill 39 at a 1 pm public hearing on the legislation.

# *Municipal Electrical Aggregation Letter of Interest*

To Whom It May Concern:

DRAFT

We, the signatories to this letter, are Maryland municipalities committed to ensuring affordable electricity for our residents. To that end, we urge passage of State legislation allowing opt-out municipal aggregation of electricity.

Each municipality signing this letter has authorized the signing of the letter and committed the municipality to work with the other endorsing municipalities to study and, if feasible and desirable, establish an aggregating entity for the joint purchase of affordable electricity on behalf of their respective citizens.

With this letter, we wish to accomplish three objectives:

- 1) To strongly urge our State Legislators to support legislation allowing municipalities to serve as an opt-out aggregator of electricity;
- 2) To signal to commercial providers of electricity and related services that we have the serious interest and capacity to serve as aggregators and that we encourage them to begin the process of understanding our needs and formulating proposals regarding energy sources and pricing terms that best serve our citizens;
- 3) To provide the basis and early leadership for an organization to be formed in the near future where we, and any municipalities who join us later, can act as a single aggregating group, thus taking advantage of our combined size and purchasing power.

The signatories to this letter commit to the following:

We will work to gain passage of legislation in the Maryland General Assembly to permit municipalities to aggregate their citizens as a consumer purchasing block for electricity.

Because of the well-recognized limitations of opt-in aggregation, we will work to ensure the State legislation allows opt-out municipal aggregation. Opt-out aggregation reduces costs to consumers (our residents) because it avoids the expense and effort of signing up individual consumers, but allows them to choose not to participate if they so desire.

We will work with the other endorsing municipalities to develop a Memorandum of Understanding regarding the formation of an aggregating entity for joint purchase of electricity on behalf of our citizens. Such an MOU would allow municipalities to pursue aggregation once legislation authorizing it is passed.

We understand that by signing this letter we are not agreeing to automatically implement

aggregation once the law is passed, but rather it is our intention to seriously explore the advantages of, and opportunities available, for implementation.

Additionally, we wish to reassert the fact that we are capable of a) determining the nature of the problems we face locally, b) assessing the feasibility of possible solutions, and c) evaluating and mitigating any associated risks. It is therefore our wish that the State government empower us by allowing us to address the issue of electricity at the local level, in a manner we and our neighbors deem appropriate.

If permitted to operate as electricity aggregators, we will work to ensure that our citizens receive the best possible price and terms for electricity.

If permitted to operate as electricity aggregators, we will investigate the possibility of buying all or most of our electricity needs from renewable sources.

Each signatory municipality will nominate a representative who will meet periodically with representatives of the other jurisdictions to further study and develop the overall aggregation plan. The representatives will bring issues of concern from, and report back to, the governing body of their respective municipalities.

Signed,

Name

Municipality

Date

Introduced by:

DRAFT  
**RESOLUTION # 2005 -**

**Resolution Authorizing Mayor To Sign Municipal Aggregation Letter of Interest**

**WHEREAS**, the City of Takoma Park, as well as many other Montgomery County and Prince George's County municipalities, support the adoption of State legislation permitting municipalities to act as opt-out aggregators of electricity on behalf of their residents; and

**WHEREAS**, such legislation is more likely to be passed if municipalities work together for its adoption; and

**WHEREAS**, the Maryland Municipal League has recommended the adoption of such legislation as one of its three Legislative Priorities for 2005; and

**WHEREAS**, municipalities are more likely to obtain lower prices and better terms as aggregators if they work together as a purchasing group; and

**WHEREAS**, lower utility costs for its residents and a healthful and sustainable environment are important priorities for the City of Takoma Park and many other Maryland municipalities; and

**WHEREAS**, a Municipal Electrical Aggregation Letter of Interest has been prepared to show the commitment of municipalities to these ends.

**NOW, THEREFORE BE IT RESOLVED** that the Council of the City of Takoma Park authorizes Mayor Kathy Porter to sign the attached Municipal Electrical Aggregation Letter of Interest and commits the City of Takoma Park staff and Council to working with other interested municipalities, the Maryland Municipal League, and other entities towards adoption of municipal electrical aggregation legislation in the Maryland General Assembly.

(PRE-FILED)

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By: **Senator Green**

Requested: July 21, 2004

Introduced and read first time: January 12, 2005

Assigned to: Finance

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A BILL ENTITLED

1 AN ACT concerning

2 **Electric Industry - Aggregation - Counties and Municipal Corporations**

3 FOR the purpose of altering the definition of "aggregator" to include a county or  
4 municipal corporation that acts on behalf of a customer to purchase electricity  
5 for customers under certain circumstances; authorizing a county or municipal  
6 corporation to act as an aggregator for certain customers except under certain  
7 circumstances; providing for a certain determination by the Public Service  
8 Commission; establishing a process through which certain customers are  
9 deemed to have given permission to the county or municipal corporation to act  
10 as their aggregator; requiring the Commission to adopt certain regulations by a  
11 certain date; requiring the Commission to consider certain factors; providing for  
12 the effective dates of certain portions of this Act; and generally relating to the  
13 ability of a county or municipal corporation to aggregate electricity customers  
14 within the county or municipal corporation.

15 BY repealing and reenacting, with amendments,  
16 Article - Public Utility Companies  
17 Section 1-101(b) and 7-510(f)  
18 Annotated Code of Maryland  
19 (1998 Volume and 2004 Supplement)

20 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
21 MARYLAND, That the Laws of Maryland read as follows:

22 **Article - Public Utility Companies**

23 1-101.

24 (b) (1) "Aggregator" means an entity or an individual that acts on behalf of a  
25 customer to purchase electricity or gas.

26 (2) "AGGREGATOR" INCLUDES A COUNTY OR MUNICIPAL CORPORATION  
27 THAT ACTS ON BEHALF OF A CUSTOMER TO PURCHASE ELECTRICITY FOR RETAIL  
28 RESIDENTIAL AND SMALL COMMERCIAL ELECTRIC CUSTOMERS:

1 (I) LOCATED IN THE COUNTY OR MUNICIPAL CORPORATION; AND

2 (II) THAT HAVE NOT:

3 1. SELECTED AN ELECTRICITY SUPPLIER OTHER THAN THE  
4 STANDARD OFFER SERVICE SUPPLIER; OR

5 2. REFUSED TO PARTICIPATE IN THE AGGREGATION  
6 ACTIVITIES OF THE COUNTY OR MUNICIPAL CORPORATION.

7 [(2)] (3) "Aggregator" does not include:

8 (i) an entity or individual that purchases electricity or gas ONLY  
9 for its own use or for the use of its subsidiaries or affiliates;

10 (ii) a municipal electric utility or a municipal gas utility serving  
11 only in its distribution territory; or

12 (iii) a combination of governmental units that purchases electricity  
13 or gas ONLY for use by the governmental units.

14 7-510.

15 (f) (1) A county or municipal corporation may [not] act as an aggregator  
16 FOR ELECTRICITY unless the Commission determines [there is not sufficient  
17 competition within the boundaries of] THAT MORE THAN 20% OF THE RETAIL  
18 RESIDENTIAL AND SMALL COMMERCIAL ELECTRIC CUSTOMERS IN the county or  
19 municipal corporation HAVE SELECTED AN ELECTRICITY SUPPLIER OTHER THAN  
20 THE STANDARD OFFER SERVICE SUPPLIER.

21 (2) THE COMMISSION SHALL MAKE ITS DETERMINATION UNDER  
22 PARAGRAPH (1) OF THIS SUBSECTION AT THE TIME THE COUNTY OR MUNICIPAL  
23 CORPORATION APPLIES FOR A LICENSE TO BECOME AN AGGREGATOR UNDER § 7-507  
24 OF THIS SUBTITLE.

25 (3) (I) IF A COUNTY OR MUNICIPAL CORPORATION CHOOSES TO ACT  
26 AS AN AGGREGATOR UNDER THIS SUBSECTION, THE COUNTY OR MUNICIPAL  
27 CORPORATION SHALL PROVIDE A WRITTEN NOTICE TO ALL RESIDENTIAL AND SMALL  
28 COMMERCIAL ELECTRIC CUSTOMERS WITHIN ITS BOUNDARIES THAT HAVE NOT  
29 CHOSEN AN ELECTRICITY SUPPLIER OTHER THAN THE STANDARD OFFER SERVICE  
30 SUPPLIER OF ITS INTENTION TO ACT AS AN AGGREGATOR.

31 (II) IN THE NOTICE, THE COUNTY OR MUNICIPAL CORPORATION  
32 SHALL PROVIDE THE RESIDENTIAL AND SMALL COMMERCIAL CUSTOMERS THE  
33 OPPORTUNITY TO REFUSE TO PARTICIPATE IN THE AGGREGATION ACTIVITIES OF  
34 THE COUNTY OR MUNICIPAL CORPORATION.

35 (III) A RESIDENTIAL OR SMALL COMMERCIAL CUSTOMER IS  
36 DEEMED TO HAVE GIVEN PERMISSION TO THE COUNTY OR MUNICIPAL  
37 CORPORATION TO ACT AS ITS AGGREGATOR:

1                                   1.       ON RECEIPT BY THE COUNTY OR MUNICIPAL  
2 CORPORATION OF A RETURNED NOTICE EXPLICITLY GRANTING PERMISSION; OR

3                                   2.       IF THE NOTICE IS NOT RETURNED TO THE COUNTY OR  
4 MUNICIPAL CORPORATION WITHIN 60 DAYS AFTER THE NOTICE IS SENT TO THE  
5 CUSTOMER.

6                   (4)       THIS SUBSECTION MAY NOT BE CONSTRUED TO PREVENT A  
7 RESIDENTIAL OR SMALL COMMERCIAL CUSTOMER IN THE COUNTY OR MUNICIPAL  
8 CORPORATION FROM PARTICIPATING IN THE COUNTY OR MUNICIPAL  
9 CORPORATION'S AGGREGATION ACTIVITIES:

10                   (I)       AFTER THE CUSTOMER HAS CHOSEN TO DISCONTINUE  
11 SERVICE WITH AN ELECTRICITY SUPPLIER OTHER THAN THE STANDARD OFFER  
12 SERVICE SUPPLIER; OR

13                   (II)       IF THE CUSTOMER HAS PREVIOUSLY REFUSED TO PARTICIPATE  
14 IN THE AGGREGATION ACTIVITIES OF THE COUNTY OR MUNICIPAL CORPORATION.

15       SECTION 2. AND BE IT FURTHER ENACTED, That, on or before October 1,  
16 2005, the Public Service Commission shall adopt regulations to establish standards  
17 and procedures to implement this Act. In adopting these regulations, the Commission  
18 shall consider: (1) whether to require a code of conduct for counties and municipal  
19 corporations that are aggregators to maintain separation between the county or  
20 municipal corporation's aggregator activities and its other activities to assure that  
21 aggregation results in benefits being passed on to ratepayers; and (2) whether to  
22 establish a priority system among a county and the municipal corporations within the  
23 county that would define which entity has the first opportunity to aggregate for  
24 customers within the jurisdiction of both the county and the municipal corporation.

25       SECTION 3. AND BE IT FURTHER ENACTED, That Section 1 of this Act shall  
26 take effect October 1, 2005.

27       SECTION 4. AND BE IT FURTHER ENACTED, That, except as provided in  
28 Section 3 of this Act, this Act shall take effect June 1, 2005.

# MUNICIPAL ELECTRICAL AGGREGATION TALKING POINTS

From  
MML

## OVERVIEW OF PROPOSED LEGISLATION:

- Removes the current prohibition of local governments to aggregate without proof of non-competitive marketplace.
- Is enabling legislation. (Municipal choice)
- "Opt-out" aggregation for residential community only – does not include commercial customers.
- Residents are included in the aggregation pool unless they inform the local government of their desire to opt out.
- Municipality must pass a local ordinance and be approved by the PSC before beginning process to act as an electrical aggregator.
- Aggregator cannot assess a new fee, tax, or other charge not related to the cost of providing electrical service. (Non-profit venture)
- PSC would review fees and adopt regulations to establish standards and procedures to implement the Act.
- Local aggregator may only aggregate up to 25% of historic demand in one calendar year and PSC determines the historic demand.

## Current Co-Sponsors:

House of Delegates: James Hubbard, Barbara Frush, Pauline Menes, Charles Boutin, Mary-Delaney James, David Rudolph, Richard Weldon, Brian Moe, Carol Petzold, Joan Stern, Charles Barkley, Kumar Barve, Elizabeth Bobo, Michael Gordon, Anne Healey, Murray Levy, Justin Ross.

State Senate: Leo Green, Richard Colburn, P.J. Hogan

## FAQ'S

### ***WHY IS ELECTRICAL AGGREGATION SO IMPORTANT THIS YEAR?***

THE ELECTRICITY RATE CAPS HAVE BEEN OR SOON WILL BE LIFTED ACROSS THE STATE AND ELECTRICITY RATES ARE GOING UP. WE NEED THE PROGRAM IN PLACE NOW!

THE RATE CAP REMOVAL SCHEDULE IS AS FOLLOWS:

- PEPCO: July 1, 2004: Montgomery and Prince Georges Counties
- Connectiv: July 1, 2004: Eastern Shore & Cecil County
- BGE - July 1, 2006: Baltimore City, Baltimore, Carroll, Howard, Harford & Anne Arundel Counties
- Allegany Power - January 1, 2009: Frederick, Allegany, Washington & Garrett Counties

### ***WHY DO CITIES AND TOWNS WANT TO AGGREGATE?***

PROVIDING SERVICES IS WHAT WE DO FOR OUR CITIZENS. MUNICIPAL OFFICIALS WANT TO BE IN A POSITION TO RESPOND TO CITIZEN REQUESTS BY HAVING THE ABILITY TO POTENTIALLY PROVIDE BETTER ELECTRIC RATES FOR OUR CITIZENS THAN THE STANDARD OFFER SERVICE RATE. CURRENTLY IN MARYLAND AND BASED ON EXPERIENCE IN OTHER STATES THAT DEREGULATED BEFORE US, THERE IS NO COMPETITION IN THE RESIDENTIAL MARKET.



**WHAT IS OPT-OUT AGGREGATION AND WHY IS IT THE ONLY REALISTIC APPROACH TO MUNICIPAL AGGREGATION?**

UNDER OPT-OUT AGGREGATION, A CUSTOMER IS INCLUDED IN THE AGGREGATION POOL UNLESS THE CUSTOMER GIVES NOTICE THAT THEY WISH TO WITHDRAW FROM THE PROGRAM.

MARKETING "OPT-IN" AGGREGATION IS EXTREMELY EXPENSIVE AND WILL NOT PROVIDE A LARGE ENOUGH POOL OF RESIDENTIAL CUSTOMERS TO ALLOW A POTENTIAL ELECTRICAL SUPPLIER TO GIVE THE CITY OR TOWN THE BEST POSSIBLE RATE. IT IS ALSO NOT A GOOD USE OF TAXPAYER MONEY TO SPEND IT ON NEEDLESS MARKETING AND ADVERTISING.

**WHAT IF A RESIDENT IS INCLUDED IN A PROGRAM AND THEY DON'T REALIZE IT. ISN'T THIS SLAMMING?**

NO! THE MUNICIPALITY HAS TO GO THROUGH THE PROCESS USED TO ADOPT A LOCAL ORDINANCE. THE LEGISLATION SAYS THAT UNLESS THE CITY OR TOWN CAN PROVIDE LOWER ELECTRICITY RATES THAN THE STANDARD OFFER SERVICE RATES, THE PUBLIC SERVICE COMMISSION WILL NOT APPROVE THE AGGREGATION REQUEST.

**IF THE MUNICIPALITY IS ALLOWED TO AGGREGATE BASED ON OPT-OUT, WON'T THEY ELIMINATE SLOW PAY/BAD CREDIT RISK CUSTOMER AND ONLY KEEP THE GOOD CUSTOMERS.**

ABSOLUTELY NOT! MANY CITIES AND TOWNS CURRENTLY PROVIDE UTILITY SERVICES FOR WATER AND SEWER AND DO NOT ACCEPT THEIR CUSTOMERS BASED ON ABILITY TO PAY. THE POSSIBILITY OF ELIMINATING BAD CREDIT RISK CUSTOMERS IS MORE LIKELY UNDER THE OPT-IN SCENARIO WHERE THE CITY OR TOWN PROACTIVELY SIGNS UP CUSTOMERS. UTILITIES ESSENTIALLY HAVE AN OPT-OUT SYSTEM NOW BECAUSE THERE IS NO COMPETITION IN THE MARKET. IF THEY ARE NOT ELIMINATING BAD CREDIT RISK CUSTOMERS, WHY WOULD MUNICIPALITIES?

**ISN'T THIS PROCESS TOO COMPLICATED AND DIFFICULT FOR MOST MUNICIPALITIES TO HANDLE?**

MUNICIPALITIES ARE IN THE BUSINESS OF PROVIDING SERVICES. MANY CITIES AND TOWNS IS ALREADY CONTRACT FOR SERVICES SUCH AS WATER, SEWER, TRASH REMOVAL, CABLE TELEVISION, POLICE/PUBLIC SAFETY AND OTHER SERVICES. MUNICIPALITIES THAT ARE INTERESTED IN AGGREGATING WOULD MOST LIKELY HIRE A CONSULTANT TO GUIDE THEM THROUGH THE PROCESS. IN ADDITION, ALL POTENTIAL AGGREGATORS WOULD HAVE TO BE APPROVED BY THE PUBLIC SERVICE COMMISSION.

**IF MUNICIPALITIES ARE PERMITTED TO AGGREGATE ON AN OPT-OUT BASIS, WON'T THEY TAKE A HUGE PIECE OF THE RESIDENTIAL MARKET AND WON'T THE STANDARD OFFER SERVICE PROVIDER THEN RAISE RATES TO COMPENSATE FOR THE LOSS OF MARKET SHARE.**

WHY DOESN'T IT WORK THE OTHER WAY AROUND? WOULDN'T THIS PROMOTE COMPETITION IN A MARKET WHERE THERE IS NONE? WOULDN'T IT BRING NEW BUSINESS TO MARYLAND THAT MAY WANT TO BID ON THE CONTRACTS? WOULDN'T THAT BE AN INCENTIVE FOR THE EXISTING PROVIDERS TO "SHARPEN THEIR PENCILS" SO THEY CAN COMPETE FOR THE BUSINESS?

January 20, 2005

## **Municipal Aggregation of Electricity Customers**

- **Background**

- Municipal aggregation is the authority by which a municipality purchases electricity on behalf of a defined group of customers
- Municipal aggregation is permitted by the electric deregulation statute, upon a finding by the Public Service Commission that competition is insufficient
- Proponents of municipal aggregation contend that the current authority is insufficient because it requires a significant cost to aggregate
- Absent a finding by the PSC that there is insufficient competition, proponents seek legislative authority for opt-out aggregation
- MML is a strong proponent of opt-out aggregation; proponents in Pepco's service area have included Rockville, Gaithersburg, Greenbelt & Bowie
- Proponents unsuccessfully sought passage of opt-out aggregation in the 2003 and 2004 General Assembly sessions.
- Under opt-out aggregation, a customer is deemed to have given permission to the entity to act as its aggregator unless or until the customer formally gives notice to withdraw

\* \* \* \* \*

**Pepco does not oppose municipal aggregation as currently authorized by the electric deregulation statute. Pepco opposes opt-out aggregation for the following reasons:**

- Opt-out aggregation undermines the Standard Offer Service (SOS) settlement agreement approved by the PSC in 2003, which establishes the local utility as the default provider for customers who choose not to choose. Pepco has entered into contracts to provide default service to these customers. Opt-out aggregation would remove large blocks of these customers by the stroke of a pen, customers that Pepco has already assumed responsibility for purchasing electricity on their behalf.
- Opt-out aggregation creates load risk, in that suppliers might increase their bids to reflect the risk of load leaving Pepco under an opt-out plan
- Opt-out aggregation creates the risk of financial exposure, in that municipalities might have to subsidize customers who are delinquent in their payments (utility currently assumes this risk)
- Opt-out aggregation has raised significant concerns at the PSC (slamming, anti-competitive, contrary to the public interest); the OPC has also expressed concerns
- Opt-out aggregation undermines the PSC's role in determining what consumer protections should be applied to aggregation

- Opt-out aggregation does not protect the interests of low-income customers, including:
  - No assurance for continuation of EUSP, MEAPP and USPP benefits and other energy assistance programs
  - No assurance that low-income customers can continue to have budget billing (level payments)
  - No assurance that current disconnection and re-connection policies will continue
  - No assurance that the government aggregator will not deny service to poor credit or non-paying customers
    - 7.7% of residents in PGC are below the poverty line customers with zip codes in Capitol Heights, Fairmount Heights, Seat Pleasant, District Heights, Hyattsville, Riverdale, Mt. Rainier & Port Towns are amongst the highest credit risks (23-35% of customers, or 18,000 households) in Prince George's County with respect to Pepco bill payments (have received multiple disconnect notices); these customers could be removed from the aggregation and face higher energy costs as a result
    - As the SOS provider, Pepco assumes the risk for supplier defaults (e.g., Mirant bankruptcy)
- Opt-out aggregation could result in diminished economies of scale – Pepco's buying power for 500,000 customers is potentially greater than Prince George's County or a group of municipalities, e.g., PGCMA
- The following organizations have opposed opt-out aggregation in previous General Assembly sessions:
  - City of District Heights
  - United Communities Against Poverty (UCAP)
  - Prince George's County Black Chamber of Commerce
  - Prince George's County Chamber of Commerce
  - Montgomery County of Chamber of Commerce
  - Maryland Department of Aging
  - Maryland Chamber of Commerce
  - Greater Washington Board of Trade
  - Mid-Atlantic Aggregation Group Independent Consortium, L.L.C. (MAAGIC)
    - BOMA Baltimore (Building Owners and Managers Association)
    - CAWA Services, Inc. (Chesapeake Automotive Business Association)
    - Health Facilities of Maryland
    - Maryland Hotel and Lodging Association
    - Maryland Retailers Association
    - Printing & Graphic Communications
    - Printing & Imaging Industries of Maryland
    - Restaurant Association of Maryland
    - Washington, Maryland & Delaware Service Station & Automobile Repair Association
  - Constellation Energy Group